

### Remarks

Claims 1 and 3-7 are currently pending. For the reasons and arguments set forth below, Applicant respectfully maintains that the claimed invention is allowable over the cited references.

The Office Action dated September 7, 2007 listed the following: The specification layout stands objected to; claims 1 and 5-7 stand rejected under 35 U.S.C. § 103(a) over Nakamura *et al.* (U.S. 6,529,714) in view of Donnelly (U.S. 5,531,365); claim 3 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Donnelly and further in view of Fuchs *et al.* (U.S. 3,870,184); and claim 4 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Donnelly and further in view of Savovic *et al.* (U.S. 5,260,146).

Applicant respectfully traverses the Section 103(a) rejections of claims 1 and 5-7 because the references cited by the Office Action fail to correspond to the claimed invention which includes, for example, aspects directed to a housing part that is constructed as a lever element being arranged to bend a bottle cap. The cited portions of the Nakamura reference do not teach that lid 3 in any way functions as a lever element being arranged to bend any material. In an attempt to address this deficiency, the Office Action cites to Donnelly's belt clip 60, which includes multipurpose tool 62 that has a bottle cap opener 112. *See, e.g.*, Figures 6A and 7A; Col. 4:46-49 and Col. 5:12-15. Donnelly's belt clip 60 is attached via an adaptor 6 to the housing 10 of a personal communications device 2. *See, e.g.*, Figures 1 and 3A; Col. 2:2-7. Thus, Donnelly's belt clip 60 is not part of the housing of a mobile phone. Accordingly, the Office Action's proposed combination of the Nakamura and Donnelly references would not result in Nakamura's lid 3 being arranged to bend any material. Accordingly, the Section 103(a) rejections of claims 1 and 5-7 are improper and Applicant requests that they be withdrawn.

In addition to the reasons discussed above, Applicant further traverses the Section 103(a) rejection of claim 5 because the cited portions of the references fail to correspond to the claimed invention which includes, for example, aspects directed to the lever element being constructed as an angled metal plate. The Office Action cites to Nakamura's lid 3 as allegedly corresponding to the lever element of the claimed invention; however, the cited portions of the Nakamura reference do not teach that lid 3 is

a folded metal plate. Moreover, a word search of the Nakamura reference fails to identify any mention of the word “metal” in the reference. Accordingly, the Section 103(a) rejection of claim 5 is improper and Applicant requests that it be withdrawn.

Applicant respectfully traverses the Section 103(a) rejections of claims 3 and 4 because the Examiner fails to address Applicant’s prior arguments (which were presented in the RCE dated June 15, 2007) as required. According to M.P.E.P. § 707(f), “the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.” The Examiner (in the instant Office Action) continues to assert the same illogical and impractical combinations of references in attempt to address the limitations of claims 3 and 4 without responding in any substantive manner to Applicant’s prior arguments. The Examiner states that Applicant’s prior arguments are moot in view of the new grounds of rejection; however, the rejection of claim 3 is still based upon the same combination of the Nakamura and Fuchs references and the rejection of claim 4 is still based upon the same combination of the Nakamura and Savovic references. Thus, Applicant’s prior arguments are relevant to the rejections of claims 3 and 4 presented in the instant Office Action and these arguments should have been addressed in substance by the Examiner. The impropriety of the Section 103(a) rejections of claims 3 and 4 are discussed in detail below.

Regarding the Section 103(a) rejection of claim 3, the Office Action’s assertion of correspondence is illogical in that it appears to require adding a bottle cap to a phone. This illogical combination is apparent from the Office Action’s attempt at providing motivation for modifying Nakamura with the cited teachings of the Fuchs reference. The Fuchs reference relates to improving convenience type easy-open closures for bottles (*see, e.g.*, the abstract). The Office Action’s alleged motivation for the modification is “to increase the hoop strength” (*see, e.g.*, the instant Office Action at page 6, lines 7-8); however, the Nakamura reference does not have any corresponding hoop strength to increase because Nakamura has no corresponding easy-open closure for a bottle. Applicant submits that it is illogical for the Office Action to suggest modifying the Nakamura reference to increase the hoop strength, in that Nakamura has no corresponding structure in which to increase the hoop strength. Put another way, it appears that the Office Action is attempting to increase the hoop strength of a bottle top

somehow located on a phone. To the extent that the Office Action is asserting that a phone would function as a bottle, Applicant submits that there is no support for such an illogical function.

Moreover, one of skill in the art would not be motivated to modify Nakamura with the cited teachings of Fuchs because of the lack of correspondence between the references and further because the references are from completely unrelated fields of endeavor (*i.e.*, radio communication equipment and bottle caps respectively). Applicant submits that the Fuchs reference is not analogous art to the claimed invention, and thus, according to MPEP § 2141.01(a), the Office Action has improperly relied upon Fuchs as a basis for the Section 103(a) rejection of claim 3.

In addition, the combination of references cited by the Office Action fails to correspond to the claimed invention for the reasons discussed above in relation to the Section 103(a) rejection of claim 1. In this regard, the rejection of claim 3 is improper because it relies upon the same misinterpretation of the Nakamura and Donnelly references. In view of the above, the Section 103(a) rejection of claim 3 is improper and Applicant requests that it be withdrawn.

Regarding the Section 103(a) rejection of claim 4, the cited portions of the Savovic reference fail to correspond to the claimed invention which includes, for example, aspects directed to the lever element being made of metal and/or ceramic. The cited portions of the Savovic reference teach a cathodically protected battery 100 that is formed from a battery cell 110 (*see, e.g.*, Col. 2, line 62 to Col. 3, line 14 and figure 1). The “metal lid” of Savovic that the Office Action cites to as corresponding to the lever element of the claimed invention, is the lid for the cell housing of the battery cell (*i.e.*, the lid is part of the battery 100). The cited portions of the Savovic reference do not teach that the lid cited by the Office Action in any way functions as a lever element being arranged to bend any material.

Moreover, the Office Action fails to provide motivation for modifying Nakamura with the cited teachings of the Savovic reference. The Office Action cites to Nakamura’s lid 3, which forms part of the housing of a telephone 1 and which covers battery pack 10, as corresponding to the lever element of the claimed invention (*see, e.g.*, figure 1 and col. 2, lines 54-65). Applicant submits that one of skill in the art would not be motivated to

modify the lid 3 of Nakamura with teachings from the Savovic reference that are directed to a battery cell (*see, e.g.*, Col. 2, line 62 to Col. 3, line 14 and figure 1). The Office Action's alleged motivation is "to connect the anode to the positive terminal" (*see, e.g.*, the instant Office Action at page 6, lines 17-18). The Office Action appears to be proposing that one of skill in the art would be motivated to modify Nakamura's lid 3 to be made of metal in order to connect the anode of Nakamura's battery pack 10 to the positive terminal of battery pack 10. Applicant submits that this proposed modification of Nakamura is unsupported and illogical. One of skill in the art would not be motivated to modify the lid 3 as taught by Nakamura to be made of metal in order to connect to the battery pack 10, because electrically connecting the battery pack to the lid (which comprises part of the outer housing of the telephone 1) would cause the lid to be electrically charged relative to the battery pack thereby resulting in numerous problems with the functionality of the Nakamura reference as would be readily apparent to one of skill in the art.

In addition, the combination of references cited by the Office Action fails to correspond to the claimed invention for the reasons discussed above in relation to the Section 103(a) rejection of claim 1. In this regard, the rejection of claim 4 is improper because it relies upon the same misinterpretation of the Nakamura and Donnelly references. In view of the above, the Section 103(a) rejection of claim 4 is improper and Applicant requests that it be withdrawn.

Regarding the Office Action's suggestion to add headings, Applicant respectfully declines because the indicated suggestions in 37 C.F.R. § 1.77(b) are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 C.F.R. § 1.51(d) are only guidelines that are suggested for applicant's use. They are not mandatory, and in fact when Rule 77 was amended in 1996 (61 FR 42790, Aug. 19, 1996), Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, stated in the Official Gazette:

"Section 1.77 is permissive rather than mandatory. ... 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in 1.77."

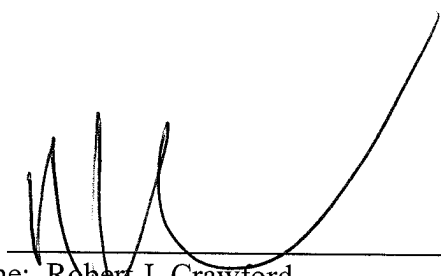
In view of the above, Applicant prefers not to add section headings.

Applicant notes that minor amendments have been made to claims 1, 6 and 7 to remove unnecessary reference numerals. These amendments are not being made to overcome any of the rejections raised by the Office Action, which fail for at least the reasons discussed above.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, David Cordeiro, of NXP Corporation at (408) 474-9057.

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